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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re H. C. et al., Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

CHRISTY C. ,

Defendant and Appellant.

E035116

(Super.Ct.No. RIJ105637)

OPINION

APPEAL from the Superior Court of Riverside County. Martin Swanson,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Sharon S. Rollo, by appointment of the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

No appearance for Minors.

FACTS AND PROCEDURAL BACKGROUND

Christy C. (mother) appeals from a dispositional order following a hearing under Welfare and Institutions Code¹ section 300.

The Riverside County Department of Public Social Services (Department) filed a petition under section 300 on March 12, 2003, with respect to minors H. C., born in November 1993, and E. C., born in December 1996. The petition alleged that mother had failed to protect the children from physical discipline resulting in injury inflicted by adults in the home including mother's boyfriend, Robert G.; mother and James C. (father)² had a history of domestic violence in the presence of the children; mother had allowed a convicted child molester to reside in the home and care for the children; mother failed to give H. his prescribed medications, which increased his violent and aggressive behavior; mother had failed to protect E. from violence inflicted on him by H.; father had an extensive history of using controlled substances; father was currently incarcerated and unable to support or care for the children; and the children were suffering emotional damage, evidenced by severe behavioral problems, as a result of physical abuse and domestic violence in the home.

The detention report filed March 13, 2003, noted that the Department had received a referral in February 2003 alleging that Robert had thrown E. against the refrigerator, and that E. was afraid to report the incident to mother. A social worker interviewed E. at

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

² Father is not a party to this appeal.

school, and E. reported that he lived with mother, his maternal grandparents and great-grandmother, and his brother H., and Robert. E. stated that all the adults in the house hit him with belts and punched him, and H. also hit him constantly. E. did not feel safe at home. During the interview, E. repeatedly hit himself in the head with a closed fist and did not stop when told to. E. had a two-inch scratch on his thigh that he said he had received in an incident involving a video game. E. was hyperactive during the interview and made statements about violence against others. The school also reported that H. had been sent to another school because of behavioral problems. When contacted by the Department, mother stated that H. often lied about being abused.

The Department received another referral alleging that H. was physically abusing and choking E. Mother stated that she was trying to find a home for herself and the children, but the children's behavior made it difficult to find child care. Mother did not believe that Robert had hit the children, and she denied current domestic violence. She admitted that H. had witnessed prior domestic violence with father, who was presently incarcerated. Mother also admitted that the children's stepgrandfather, Wayne D., was a convicted child molester and that he occasionally provided care for the children. Mother believed this was safe, because Wayne had molested only girls.

Mother admitted that H. was physically abusive toward all the members of the household, but especially against E. and his great-grandmother. Mother was reluctant to medicate the children because she feared they would become addicted. E. had started a fire playing with matches in bed when he was three years old and had burned the house down. Both children had been diagnosed with Attention Deficit Hyperactivity Disorder

(ADHD), and H. had been prescribed medications. H. was abusive and threatening toward E. during the interview. H. reported that everyone in the home hit him with belts, and he liked hitting his own head and having others hit it as well.

The Department detained the children. At the Department office, both children used derogatory language and exhibited aggressive behavior toward each other, and H. made threatening gestures toward Department staff. H. reported that he had once threatened another student at school with a knife he had brought to school, and he had thought about shooting another student. E. yanked at clumps of his own hair and said that doing so felt good. He also pulled out several of his own eyelashes and told Department staff that it did not hurt.

At the detention hearing, the court found that a prima facie showing had been made that the children came within section 300 and removed the children from the custody of parents pending a hearing under section 355. The court ordered psychological evaluations of the children. E. was placed in a shelter care home, and H. was placed in a group home.

The jurisdiction/disposition report stated that H. reported that father had once thrown him against a wall, causing his nose to bleed. H. admitted beating up E. and once biting him. H. wanted to return home to mother. E. reported that mother had hit him with a belt; his great-grandmother had once sat on him, and Robert had beaten up him and H.

Mother denied the allegations of the petition. She stated that the children had not been abused and stated that they were not truthful. She visited the children and had

positive interactions with them, and she reported being enrolled in parenting classes and counseling.

The Department recommended reunification services for mother including counseling, a domestic violence program, a parenting program, and regular visitation.

At the group home, H. had to be restrained numerous times for violent behavior, including attempting to assault the staff and other children and to injure himself.

E. was transferred to a group home after exhibiting aggressive and defiant behavior. E. was placed on a psychological hold under section 5150, and he remained in the hospital for several days while his medications were adjusted. He was diagnosed with ADHD, major depression, bipolar affective disorder, possible conduct disorder, and intermittent explosive disorder.

Mother visited the children regularly. During one visit, E. had kicked mother. Mother had driven father to visits because he had no transportation. In September, a counselor at H.'s group home wrote to the Department requesting that H.'s visitations with mother be decreased because mother discussed the case and the court issues with him, despite being told not to do so, cried in front of him, and otherwise put guilt on him, which made him act out at school and at the group home.

Mother and Robert completed a parenting class.

The contested jurisdictional/dispositional hearing began in November 2003. E.'s former foster mother testified that E. had been in her care for about six months, and he had twice denied having been thrown against the refrigerator; rather, he had said he had

fallen off his scooter. E.'s teacher had told the foster mother that E. told lies at school about other children. The foster mother had not had any problem with E. lying to her.

Robert denied ever spanking or using a belt on H. or E. or throwing E. against a refrigerator. He had disciplined the children by speaking to them or giving them a time-out. The children's maternal grandmother and great-grandmother had disciplined the children by restraining them or speaking to them. Mother had spanked the children on the bottom, but she had never used a belt on them. She would also restrain them by holding them on her lap until they calmed down. Robert admitted that H. and E. had punched each other "like brothers do," but not hard enough to cause harm. He stated that mother had given H. his medications unless H. was sick and vomiting. Robert had never been left alone with the children. Robert was no longer living with mother, but he had participated in a parenting class with her, and might return to living with her, depending on the outcome of this case. H. had made up stories twice that Robert had hit or punched H.

Mother testified that father was currently incarcerated and had previously been incarcerated for "intent to commit bodily injury to spouse," "terroristic acts against his spouse," "sale and trafficking of methamphetamine and marijuana," "contributing to the delinquency of a minor, assault and battery, destruction of private property, [and] receiving stolen goods." Father had been violent with her, and H. had witnessed it. Mother and father had separated when H. was about three years old and E. was about three months old. She and the children had lived with her mother and grandmother since

1998. Her stepfather, who had molested her when she was 16 years old, moved in in 2000. She worked long hours so she and the children could get their own home.

Mother stated that H.'s school evaluation, performed at her request, stated that he had a problem with authority and did not want to do what he was told. He was diagnosed with ADHD, and prescribed medication was helping. Mother admitted that H. had struck his grandmother. Mother denied using corporal punishment on H.; rather, she disciplined him by grounding him or restricting him from playing games or with his toys. She also swatted the children on the bottom with an open hand. Mother participated once a month in a program with H. at school. Mother admitted that H. had been suspended for bringing a knife to school and he had been expelled in 2001 when he threatened to bring a gun to school to kill another student.

H. and E. had fought often, and when mother had tried to restrain him, E. had pulled her hair. In September 2002, H. had hit E. in the mouth with a toy broom, resulting in a cut that required three stitches. E. had set the house on fire a few days before his third birthday. Mother regularly gave H. his medication unless he was sick. Mother testified that Robert had never been left alone with the boys, but that their maternal grandmother or great-grandmother was always present. The children had told her once or twice each that Robert had struck or hurt them, but the children had no visible marks, and they changed their stories, so she did not believe them. The children did not always tell the truth, and they had made up stories. H. once claimed he had been molested in the bathroom at his group home, but had admitted lying when an investigation was begun. H. had also told the group home that mother smoked crack, but

H. also admitted lying about that. No one in the family disciplined the children by using a belt.

Mother testified that Los Angeles County Child Protective Services (CPS) had contacted her once when the children had thrown toys at each other; E. had given H. a black eye in doing so; and H. had told his teacher at school that he had been hit across the face with a belt. Another time, a police officer came to the house to investigate a report that mother's stepfather was allowing the children to look at pornographic material.

Mother had sought counseling for H. when he was in kindergarten, and he received therapy at school for a year and a half. He had received medication since August 2002.

Mother admitted that H. had witnessed father's violence toward her when H. was about two years old. Father had given H. a bloody nose. Mother had obtained a restraining order against father, and she had had him arrested 10 to 15 times for violations of the order and acts of domestic violence. Mother believed that before father was allowed to see the children, he should submit to random drug testing and parenting and anger management classes. She felt that H.'s aggressive behavior was attributable to father's abuse.

E. had told mother that he had scratched his leg on concrete steps while playing outside. He never told mother that Robert had thrown him against a refrigerator. Mother did not believe that Robert had abused the children. Mother denied that she and Robert had ever struck each other. She denied having hit Robert's son with a belt or having spanked him. She denied that H. had ever cut himself with a knife or razor blade. He

had received scratches from skateboard, roller blade, and bicycle falls and from playing with his brother.

The children's maternal grandmother, Jillinea D., testified that mother had moved back in with her in 1998. Jillinea's own mother, Constance W., also lived in the home. When mother was taking night classes, Jillinea supervised the children, and when mother took day classes, Constance supervised the children. Robert also was living with them. Jillinea disciplined the children by giving them a time-out, and she sometimes spanked them on their bottoms. Jillinea never used a belt on them, and no one else in the house had ever done so. She had sometimes placed them on her lap and held her arms around them to restrain them. In March 2003, E. came in with a scrape on his leg; he told Jillinea he had done it while on a skateboard or scooter on the steps. He never said that Robert had thrown him against the refrigerator. Jillinea never saw Robert discipline the children. Mother sometimes spanked them with an open hand. Jillinea had never seen Constance sit on the children, although Constance sometimes restrained them by holding their arms.

Jillinea had allowed Wayne to move back into the house after he was released on parole from the child molestation conviction. Mother did not object. Wayne was never left alone with the children. Jillinea herself had been in an abusive relationship with mother's father, and mother had witnessed the abuse until she was nine years old.

Constance testified that she had cared for the children when mother was working during the day. She disciplined the children by giving them time-outs or removing privileges. H. had once kicked her in the shin, and a man from CPS had come to the

house to check on the incident. E. had caused a fire that destroyed Constance's mobilehome when he was about three years old. Constance had never seen Robert abuse the children. E. told Constance that he had injured his leg when he fell while playing with his skateboard on the front porch.

The children's social worker testified that E. had been placed on a section 5150 hold after his behavior had become violent and assaultive, and he had been given medication in August 2003. Jones had observed 10 to 15 visits between mother and the children, and she believed that mother's behavior had been inappropriate during one visit. The social worker had seen scars on H.'s legs, and arms and on the inside of his wrists. H. told her that the scars had come from scooter accidents and falling while playing. Jones had asked H. if he had ever tried to cut himself, and he had denied doing so.

H. testified that E. had bruised his leg when the boys were roughhousing. H. ran into the kitchen, and E. ran after him and tackled him. Robert came into the kitchen and "rammed into me, and . . . when he rammed into me, he didn't want to hit my brother, so he like pushed my brother, and my brother hit up against the wall, and he got that big bruise right there." It had been an accident. E. had not injured his leg on a skateboard. E. had lied when he said that Robert had tried to hurt him. H. said that mother had "totally stopped" hitting the children with a belt: "I mean, she used to do it, but she doesn't do it anymore because she feels that she is, um, being mean to her kids, and she feels like that that's just wrong, and it's not safe to the kids." Mother had once hit Robert's son with a belt. Wayne sometimes spanked H. with a belt, "but he doesn't do it as often as my mom used to." Everyone in the house spanked H. with a belt except his

grandmother and great-grandmother. He testified that he was usually disciplined by being spanked and by having to stand in the corner. Wayne had once hit H. with a pipe when H. accidentally walked into a pipe Wayne was carrying. Robert had babysat the children for about two years because the other adults in the home were working. Robert disciplined H. by standing him in the corner and by spanking him hard on the “booty.” Once Robert had left “big red marks” from a spanking. Mother hit Robert for spanking the boys.

H. said that he used to play with knives when he was small, and he had once cut an “X” into one arm with a razor blade and had cut a vein in the other arm. His mother had taken the razor blade away and told him not to do that. He said that he felt that he had to take care of his mother when Robert tried to hit her.

The court found by a preponderance of the evidence that the allegations were true that mother had failed to protect the children from physical discipline resulting in injury inflicted by adults in the home; mother and father had a history of domestic violence in the presence of the children; mother had failed to protect E. from violence inflicted on him by H.; father had an extensive history of using controlled substances; and father was currently incarcerated and unable to support or care for the children. The court found the other allegations to be not true. The court found that father was the presumed father of both children. The declared both children dependents of the court and ordered reunification services for both parents.

DISCUSSION

Counsel for mother submitted a no-issue brief under authority of *In re Sade C.* (1996) 13 Cal.4th 952, *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738, setting forth an integrated statement of the case and facts and asking this court to undertake an independent review of the entire record. We provided mother with an opportunity to file a personal supplemental brief, but she has not done so.

Even though we are not required to conduct an independent review of the record under *In re Sade C.*, *supra*, 13 Cal.4th 952, we have done so. We have completed that review and have found no arguable issues.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

WARD

J.

GAUT

J.